

1998

# Chris Buddensick v. StateLine Hotel Inc., dba StateLine Hotel and Casino, and Does I-X : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS  
BRIEF**

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IN THE UTAH COURT OF APPEALS

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CHRIS BUDDENSICK,	)	
	)	
Plaintiff and Appellant,	)	
	)	
	)	Appellate Court No. 980052-CA
vs.	)	
	)	
StateLine HOTEL, INC., dba	)	
StateLine HOTEL AND CASINO,	)	Priority No. 15
and DOES, I - X,	)	
	)	
Defendants and Appellees.	)	
	)	

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BRIEF OF APPELLANT CHRIS BUDDENSICK  
REQUEST FOR ORAL ARGUMENT

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APPEAL FROM AN JUDGMENT ENTERED IN THE  
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,  
STATE OF UTAH, THE HONORABLE WILLIAM A. THORNE PRESIDING

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**FILED**  
Utah Court of Appeals  
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Julia D'Alesandro  
Clerk of the Court

## LIST OF PARTIES

### Appellants

Plaintiff: Chris Buddensick

### Appellees

Defendants: StateLine Hotel, Inc.. dba  
StateLine Hotel and Casino,  
and DOES I - X

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## **JURISDICTION**

This court has jurisdiction to hear this appeal pursuant to Utah Code Annotated § 78-2(a)-3. This is an appeal from a final Order in the Third District Court of Salt Lake County, State of Utah.

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**ISSUE I: WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT APPELLEE WAS NOT DOING BUSINESS, NOR MAINTAINED MINIMUM CONTACTS IN THE STATE OF UTAH, SUFFICIENT TO CONFER GENERAL PERSONAL JURISDICTION.**

**ISSUE II: WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT UTAH'S LONG ARM STATUTE, UTAH CODE ANNOTATED § 78-27-24 (1996), DID NOT CONFER SPECIFIC JURISDICTION OVER APPELLEE.**

### **A. STANDARD OF REVIEW**

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> Herbertson v. Willowcreek Plaza, 895

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<sup>1</sup> As in Herbertson, here the trial court considered more than just the pleadings making his determination and therefore, the ruling is best characterized as a grant of summary judgment.



P.2d 839, 840 & n.1 (Utah 1995). In reviewing a motion for summary judgment, this court will consider “all of the facts and evidence presented, and every reasonable inference arising therefrom, in a light most favorable to the party opposing the Motion.” *Katzenberger v. State*, 735 P.2d 405, 408 (Utah 1987). Further, because summary judgment presents only questions of law, this court accords no deference to the trial court’s ruling and reviews it for correctness. *Mumford v. ITT Commercial Fin. Corp.*, 858 P.2d 1041, 1043 (Utah 1993).

### **DETERMINATIVE STATUTES AND RULES**

The following Statutes and Rules are determinative of the questions at issue in this appeal:

Utah Rules of Civil Procedure, Rule 12(b)(2):

Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (2) lack of jurisdiction over the person

Utah Code Ann. § 78-27-24:

Any person ... whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

- (1) the transaction of any business within this state; ...

### **STATEMENT OF CASE**

#### **Nature of the Case and Course of Proceedings**

Plaintiff Appellant **Chris Buddensick** brought this action in the **Third Judicial District Court** to recover compensation for injuries she sustained as a result of a slip and fall accident at the StateLine Hotel and Casino in Wendover, Nevada. She filed a Complaint which was not answered by Defendant/StateLine. Instead, StateLine filed a Motion to Dismiss on the grounds and for the reason that Utah Courts lacked specific and general personal jurisdiction over its Hotel and Casino. Defendant argued the District Court did not have jurisdiction under Utah's "Long Arm Statute", Utah Code Ann. § 78-27-24, nor did the Court have general personal jurisdiction over StateLine Hotel and Casino, as it was not "doing business" in Utah and did not have sufficient minimum contacts with the State. Plaintiff argued that Defendants contacts with Utah, and the fact it was doing business within the State, were sufficient to confer personal jurisdiction. Although the Court found there were business contacts in Utah as outlined in its Findings of Fact, Conclusions of Law and Order, the Court granted Defendant's Motion and dismissed this action finding there were not sufficient minimum contacts nor was Defendant doing business, sufficient to confer specific and/or general personal jurisdiction. (See Exhibit "C")

### **STATEMENT OF FACTS AND DISPOSITION**

1. On or about July 29, 1996, Appellant was in Defendants' StateLine Casino buffet restaurant for the purpose of eating a meal. StateLine employees had completed preparing the buffet and had just opened it for the public. Appellant was the second or third person in line at the buffet. Appellant, while proceeding through the buffet line, slipped on a substance that was on the floor, causing Appellant to fall.

2. As a result of the accident on July 29, 1996, Ms. Buddensick suffered serious personal injuries which required extensive medical care.

3. On January 17, 1997, Plaintiff filed a Complaint in the Third Judicial District Court of Salt Lake County. (R. 1-4)

4. On March 17, 1997, Defendant filed a Motion to Dismiss the Complaint based on lack of jurisdiction. (R. 14-16)

5. On June 30, 1997, a hearing was held before Judge William A. Thorne to argue Defendant's Motion. The Court granted an evidentiary hearing to take place after discovery had been completed on the limited issue of StateLine's business activities in Utah. (R. 269)

6. Discovery revealed that Defendant advertises its hotel and casino in Utah; contracts for goods and services in Utah; owns stock in a Utah Corporation, StateLine Properties, Inc.; leases from StateLine Properties, and has leased for many years, two parcels of property in Utah for parking lot, parking structure and signage purposes, relating to Defendant's hotel and casino business; leases and has leased for many years, at least three other parcels located in Utah; maintains at least three post office boxes in Utah, one of which Defendant shares with StateLine Properties; is a party to numerous other lawsuits pending in Utah; has a Utah cellular telephone number, regular phone number and six Utah fax numbers.

7. Nearly every agreement entered into by Defendant, including the leases and contracts noted above, show that they were executed and notarized in Salt Lake City, Utah. The documents were also drafted by a Utah attorney.

8. On September 15, 1997, the evidentiary hearing was held with Honorable William A. Thorne to argue Defendants' Motion to Dismiss Plaintiff's Complaint. (R. 270)

9. On October 8, 1997, Findings of Fact, Conclusions of Law and Order was entered in this matter by Judge Thorne dismissing Plaintiff's Complaint. (R. 247-252)

10. On October 22, 1997, Plaintiff Appellant filed a timely Notice of Appeal in the Third Judicial District Court of Salt Lake County, State of Utah. (R. 253-254)

### **RELIEF SOUGHT ON APPEAL**

Appellant seeks the reversal of the trial court's ruling dismissing Appellant's complaint for lack of general and specific jurisdiction.

### **SUMMARY OF ARGUMENT**

I. The trial court erred in dismissing Appellant's Complaint, because StateLine has engaged in substantial and continuous local activity, and in doing so, should have reasonably expected to be hailed into a Utah Court, thus creating general personal jurisdiction.

II. The trial court erred in dismissing Appellant's Complaint for lack of specific personal jurisdiction. Appellant went to the Appellees' premises due to Appellees' advertising activities in the State of Utah. Therefore, the injuries Appellant suffered were the result of Appellees' contacts with Utah and Utah's Long Arm Statute Utah Code Annotated § 78-27-24 confers jurisdiction over Appellees.

## **ARGUMENT**

### **POINT I.**

#### **THE TRIAL COURT COMMITTED REVERSIBLE ERROR, IN FINDING THAT APPELLEE WAS NOT DOING BUSINESS, NOR MAINTAINED MINIMUM CONTACTS IN THE STATE OF UTAH, SUFFICIENT TO CONFER GENERAL PERSONAL JURISDICTION.**

When a motion for lack of jurisdiction is submitted, a Plaintiff need only make a prima facie showing to establish jurisdiction over a Defendant. Neways, Inc. v. McCauglan, 950 P.2d 420 (Utah 1997). Here, more than a prima facie showing was made by Plaintiff.

“General personal jurisdiction over a party results when the party has contacts in the forum state and those contacts are ‘substantial’ or ‘continuous and systematic.’” Alexander v. Circus Circus Enter., Inc. 939 F.2d 847, 850 (9th Cir. 1991) (quoting Fields v. Sedgwick Associated Risks, Ltd., 796 F.2d 299, 301 (9th Cir. 1986) (quoting Haisten v. Grass Valley Med. Reimbursement Fund, 784 F.2d 1392, 1396 (9th Cir. 1986))); see also Abbott G.M. Diesel v. Piper Aircraft Corp., 578 P.2d 850, 853 n.6. (Utah 1978).<sup>2</sup>

At the evidentiary hearing before the trial court, Plaintiff made a clear showing that Defendant transacts sufficient and indeed substantial business in the State of Utah and/or there are other grounds for the Court’s exercise of general personal jurisdiction over Defendant. (See Exhibit “D”)

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<sup>2</sup> The Utah Supreme Court in Abbott distinguished between general personal jurisdiction and specific personal jurisdiction. The court explained that general personal jurisdiction results from doing business, which required substantial and continuous activity.

Abbott, 578 P.2d at 853 n.6.

1. During pertinent periods, Defendant contracted with *at least* two Utah corporations:
  - (a) A June 1, 1996 contract with American Linen of Salt Lake City, Utah: (R. 111-112)
  - (b) August 19, 1996 with Retail Control Systems of Salt Lake City, Utah for maintenance of its “register equipment”. (R. 113)
2. The Defendant Nevada Corporation also leases, occupies and possesses the following parcels of real property in the state of Utah:
  - (a) Property covered by an August 1, 1996 Lease by and between StateLine Properties, Inc. as landlord and Defendant as tenant covering certain property described in the document attached to Plaintiff’s Supplemental Memorandum in Opposition to Defendant’s Motion. (R. 114-118)
  - (b) A duplex located in Wendover, Tooele County, Utah, covered by a Lease and extension thereof by and between StateLine Properties as lessor and Defendant as lessee. A copy of this Lease is attached to Plaintiff’s Supplemental Memorandum in Opposition to Defendant’s Motion. (R. 119-120)
  - (c) A Lease and extension thereof covering two warehouse buildings situated in Wendover, Tooele County, Utah, by and between StateLine Properties as lessor and Defendant, as lessee. A copy of said Lease is attached to Plaintiff/Appellant’s Supplemental Memorandum in Opposition to Defendant’s Motion. (R. 121-122)
  - (d) A Lease covering a parking structure and land by and between StateLine Properties, Inc., as lessor and StateLine Hotel, Inc. as lessee. A copy of said Lease is attached to

Plaintiff/Appellant's Supplemental Memorandum in Opposition to Defendant's Motion. (R. 123-130)

(e) A Lease covering Lot 1, Block 26, Wendover Plat A in Tooele County, Utah, by and between StateLine Properties, Inc., as lessor and Defendant, as lessee. A copy of said Lease is attached to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion. (R.131-137)

(f) Building #406 at Decker Field in Wendover, Utah, under a D.F.A.A. Standard Lease wherein the city of Wendover appears as lessor and Defendant as lessee. A copy of said Lease is attached to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion. (R. 138-149)

3. The insurance policy issued by St. Paul Mercury Insurance Company (policy number CK08305449) covering the slip and fall accident the subject of this litigation insures not only StateLine Hotel, Inc. (the Defendant), but also StateLine Properties, both the Utah Corporation and limited partnership. It also insures the StateLine Inn, a Utah Corporation. Property covered by the policy includes a hotel and motel in Utah; a mobile home park located in Utah; and the properties set forth in paragraph 2 above. Pertinent portions of the policy are attached to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion. (R. 150-159)

4. Defendant's Answers to Interrogatories note not only the post office box located in Wendover, Utah, mentioned during oral argument at the original hearing, but two additional post office boxes in Utah. It also shows StateLine Properties, Inc. and StateLine Properties, Ltd., Utah entities, shared that post office box. StateLine Hotel, Inc. also has a Utah cellular phone number,

regular phone number and six Utah fax numbers. See Defendant's Answer to Interrogatory No. 3, attached to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion. (R. 160-162)

5. Nearly every agreement entered into by Defendant, including the leases and contracts noted above, show they were executed and notarized in Salt Lake City, Utah. The documents were also drafted by Utah attorneys.

### **DEFENDANT TRANSACTS SUBSTANTIAL BUSINESS IN UTAH**

Defendant's Motion to Dismiss premised upon the absence of personal jurisdiction argues it has only minimal contacts with Utah (arising out of advertising and promotional activities) which are insufficient for litigating unrelated causes of action. The foregoing facts indicate it does far more than simply advertise in Utah. Rather, it occupies no less than six pieces of property in the State; contracts with several Utah companies; and, interesting enough, is covered for the subject incident by an insurance policy also covering numerous Utah corporations and properties. All this is in addition to relevant facts such as maintaining Utah post office boxes, phone numbers and the substantial advertising it conducts in the State.

Hence, it is almost ludicrous for Defendants to argue it does not have "substantial and continuous local activity" or that it does not expect to be hailed into Utah courts. (Please here note that the Answer to Interrogatory #4 discloses numerous other lawsuits pending against Defendant in the State of Utah). (See Exhibit "E")

At least two recent Utah cases have, under circumstances similar to StateLine Hotel, found jurisdiction over non-resident corporations. For instance, in Radcliff v. Akhavan, 875 P.2d 608



(Utah 1994), the Court found that non-resident corporations are considered to be doing business in Utah “if they negotiate and enter into contracts within the state” something which Defendant has clearly done here. And, minimum contacts exists because Defendant could reasonably anticipate being haled into Court here. Bradford v. Naegle, 763 P.2d 791, 794 (Utah 1988). Other factors relevant in our case include: (1) the presence of employees in the State; and (2) its’ leasing or ownership of real or personal property in the State. See, Hebertson v. Willow Creek Plaza, 895 P.2d 839 (Utah 1995).

Attempting to obscure its possession of property in Utah, Defendant’s earlier filings, including specifically the affidavits of Larry Herron and Steven Brown Perry state that StateLine Hotel, Inc. “does not own any property in Utah”. They go on to state that StateLine Properties owns a one-half acre parcel of real property in Wendover, Utah. However, documents later produced indicate StateLine Properties owns at least five pieces of property in Utah all of which are leased to Defendant. Further, they are insured under the same insurance policy disclosing ownership or possession of additional properties in Utah (at a minimum, the StateLine Inn).

Further, a number of courts have held that advertising and promotional activities in a forum state were alone sufficient to invoke general personal jurisdiction.

In Weintraub v. Walt Disney World, 825 F. Supp. 717 (E.D. Pa. 1993), Pennsylvania plaintiffs sued a corporation for injuries sustained on a ride at its amusement park and resort in Florida. Defendant moved to dismiss for lack of personal jurisdiction. The court found that defendant had “continuous and systematic” contacts with Pennsylvania. Id. at 721. Weintraub held it was proper to exercise general personal jurisdiction over the non-resident corporate defendant. Id. at 722.

Similar to our facts, the defendant's contacts with the forum included: promoting its amusement park and resort through newspapers and magazines circulated in Pennsylvania; promoting its amusement park and resort on television programs and commercials aired in Pennsylvania; maintaining a toll-free 800 number for Pennsylvania travel agents; and defendant's representatives visiting that state for public relations purposes.

Boone v. Sulphur Creek Resort, Inc., 749 F. Supp. 195 (S.D. Ind. 1990) involved an Indiana resident who brought suit in Indiana against a Kentucky corporation, headquartered in Kentucky, for injuries sustained at the corporation's resort located in Kentucky. Defendant sought to have plaintiff's action dismissed arguing the Indiana court lacked jurisdiction over it. The court held defendant's contacts with Indiana and its residents were "continuous and systematic" sufficient for an Indiana court to exercise general personal jurisdiction. Id. at 199. In reaching its decision, the court found that defendant's contacts with Indiana included advertising specifically targeted at Indiana residents, resulting in Indiana residents making up a large percentage of defendant's customer base (just as is the case with Utah residents and StateLine's Nevada resort). Furthermore, defendant sought to serve the Indiana tourist market; its representatives had made reservations for and taken deposits from Indiana residents while in Indiana; defendant had benefited from Indiana law and had solicited business there. Id. at 199-200. The court noted that the contacts between defendant and Indiana involved precisely those the United State Supreme Court has emphasized are significant. Id. at 199; see World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed.2d 490 (1980). The court concluded defendant had "purposefully availed itself of the privilege of conducting activities within the forum state" and could therefore "reasonably anticipate being haled into court [in Indiana]." Id. at 200 (quoting World-Wide Volkswagen, 444 U.S. at 297).

Additionally, the Boone court recognized Indiana had a significant interest “in regulating the conduct of out-of-state actors who intentionally direct their advertising and promotional pleas to Indiana residents.” Id. at 201. Because plaintiff resided in Indiana and received medical treatment in Indiana for injuries sustained at defendant’s resort, Indiana was a reasonable location for plaintiff to bring his cause of action. Id.

In Gavigan v. Walt Disney World Co., 630 F. Supp. 148 (E.D. Pa. 1986), Pennsylvania residents brought an action in a Pennsylvania court against a Delaware corporation doing business in Florida for injuries sustained at the corporation’s Florida complex. In determining whether Pennsylvania had jurisdiction over Disney, the court found it conducted extensive advertising in Pennsylvania for the purpose of promoting its entertainment complex in Florida. Specifically, defendant promoted its complex by advertising in a Philadelphia newspaper; providing a toll-free 800 number for Pennsylvania residents to use to make reservations; and running a number of advertisements on local Philadelphia television stations. The court concluded that defendant’s advertisements and related promotional activities reflected an ongoing pattern of activity in Pennsylvania which was substantial and continuous. Id. at 152. Accordingly, the court held that general personal jurisdiction over defendant was proper. Id.

Here, StateLine conducts extensive and aggressive advertising in Utah to promote its hotel and casino to Utah residents. StateLine’s advertising includes advertisements that run regularly in local newspapers and magazines as well as frequently aired television and radio commercials on local Utah stations. StateLine also advertises through the use of billboards throughout Utah, as well as busing Utah residents to its casino. (R. 56, 59, 60, 61, 62) Coupled with its property interests

in Utah it seems these activities provide ample reasons for this State to exercise jurisdiction over a Nevada Corporation with its principal place of business in a border town

Wendover, Nevada the town in which StateLine's hotel and casino is located is located on the Utah-Nevada border Salt Lake City and the Wasatch front in general is the closest area with a large concentration of population A large majority of StateLine's advertising and promotional activities are directed at Utah residents Consequently, a majority of StateLine's patrons are Utah residents

StateLine maintains an office in Salt Lake City, Utah with StateLine Properties to direct its advertising campaign and booking reservations for Defendant StateLine's hotel and casino (R 56, 59, 60, 61, 62) StateLine also provides a toll-free 800 number to Utah residents for making reservations at StateLine's hotel and casino (R 64)

In sum, StateLine's advertising and promotion reflect an ongoing pattern of activity in Utah Its contacts with Utah are substantial, continuous and systematic StateLine has purposefully availed itself of the privilege of conducting activities within Utah and could therefore reasonably anticipate being haled into court in Utah Utah has a significant interest in regulating the conduct of StateLine an out-of-state actor who intentionally directs its advertising and promotional pleas to Utah residents

This course of action, of contracting with Utah corporations, having ownership in Utah corporations and occupying at least six parcels of property, clearly demonstrates substantial contacts with this forum, and shows that these contacts are "continuous and systematic" It follows that as

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<sup>3</sup> Although this is not a "forum non conveniens" issue, the ease of obtaining witnesses' testimony (here far greater in Utah) should be a factor favoring jurisdiction in this forum

required by Abbott. Defendant/Appellee is “doing business” sufficient to confer jurisdiction, as Defendant/Appellee has engaged in substantial and continuous activity in Utah.

The Plaintiff made more than a prima facie showing that the trial court maintained personal jurisdiction, and as evidenced above, its ruling to the contrary is clearly erroneous.

## **POINT II.**

### **THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT UTAH’S LONG ARM STATUTE, UTAH CODE ANNOTATED § 78-27-24 (1996) DID NOT CONFER SPECIFIC PERSONAL JURISDICTION OVER APPELLEE.**

A prima facie showing of specific personal jurisdiction was also made by Plaintiff/Appellant before the District Court. See Neways, Inc. v. McCauglan, supra. Specific personal jurisdiction applies to Utah’s long-arm statute and requires only minimum contacts with the forum state. Where a defendant has only minimum contacts, specific personal jurisdiction may be asserted only on claims arising out of defendant’s activity in the forum state. In Frontier Fed. Sav. & Loan v. National Hotel Corp., 675 F. Supp. 1293, 1295 (D. Utah 1987), the Court set forth a three step analysis for cases asserting specific personal jurisdiction under Utah’s long-arm statute. First, it is necessary to determine whether the facts of the case meet one of the statute’s specifically enumerated acts. Second, whether plaintiff’s claim arises out of one of the statute’s specifically enumerated acts. And finally, whether the jurisdictional assertion meets federal due process requirements. Id. at 1296-1298.

StateLine's conduct falls within one of Utah long-arm statute's specifically enumerated acts.

Section 78-27-24 of the Utah Code provides in part:

Any person . . . whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

- (1) the transaction of any business within this state: . . .

The long-arm statute "should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution." Utah Code Ann. § 78-27-22. Clearly, the legislature intended to give broad application to the statute. Frontier, 675 F. Supp. at 1297 (quoting Synergetics v. Marathon Ranching Co., 701 P.2d 1106, 1110 (Utah 1985) (citing Brown v. Carnes Corp., 611 P.2d 378, 380 (Utah 1980))).

Section 78-27-23 of the Utah Code defines "transaction of business within this state" as "activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state of Utah." Utah Code Ann. 78-27-23(2). In light of the broad nature of the statute and the limited showing required of a plaintiff urging jurisdiction, Neways, supra; and Frontier, 675 F. Supp. at 1297 & n.5, Ms. Buddensick has made a prima facie showing that the Utah long-arm statute confers specific personal jurisdiction over Defendant. By virtue of its substantial transaction of business in Utah (as set out more fully above in Point I), StateLine has purposefully availed itself of the privilege of conducting activities in Utah.

Plaintiff's claim also meets the second step in the jurisdictional analysis. Plaintiff's claim against StateLine for negligence arises out of StateLine's transaction of business in Utah in that she

traveled to Wendover and was a guest at StateLine's hotel and casino due in part to StateLine's advertising and promotional activities.

In Alexander v. Circus Enters., Inc., 939 F.2d 847 (9th Cir. 1991). California residents brought a cause of action in California against a Nevada hotel and casino for injuries sustained on a pontoon boat associated with the resort. In deciding whether specific personal jurisdiction was proper over the Nevada defendant, the court first concluded defendant had substantial advertising directed at Southern California and that defendant had therefore purposefully availed itself of the privilege of conducting activities in the forum state. Id. at 851-53. The court went on to determine whether plaintiff's claim arose out of defendant's forum related activity. Applying a "but for" test, the court concluded that plaintiff's claim did in fact arise out of defendant's advertising activities in California. Id. At 853. The court reasoned that defendant's solicitation of business in California attracted plaintiffs to the hotel and casino and subsequent pontoon boat ride. "It was the defendant's forum-related activities that put the parties within 'tortious striking distance' of one another." Id. (quoting Shute v. Carnival Cruise Lines, 897 F.2d 377, (9th Cir. 1990)). The court held that specific personal jurisdiction over the Nevada defendant was proper in California. Id. At 854.

The final and dispositive step in this analysis requires the assertion of jurisdiction to comply with federal due process limitations. In determining if the exercise of personal jurisdiction comports with due process, "the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' with the forum state." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). In assessing minimum contacts, it is necessary to focus on the relationship of the defendant, the forum and the litigation. Shaffer v. Heitner, 435 U.S. 186, 204 (1977). Moreover, it must be foreseeable

that the “defendant’s conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court” in the forum state. Burger King, 471 U.S. at 474 (quoting Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)), because it has “purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its law.” Burger King, 471 U.S. at 474 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

StateLine’s conduct and connection with Utah is such that it has purposefully established minimum contacts with Utah to the extent it should reasonably anticipate being subject to jurisdiction in Utah. StateLine’s connection to the forum is its transacting business in Utah. Specifically, StateLine conducts extensive and aggressive advertising in Utah directed at Utah residents, owns/leases property in Utah, contracts with at least three Utah corporations and has an ownership interest in a Utah corporation. It was this activity that resulted in plaintiff’s injury and later precipitated this litigation. Alexander, 939 F.2d at 853 (citing Shute, 897 F.2d at 383-84) (“a tort can arise out of a prior business solicitation in the forum state”). And while the foreseeability of causing injury that will be felt in another state, is by itself not a sufficient basis for jurisdiction, World-wide Volkswagen, 444 U.S. at 294, StateLine has sufficient other contacts with Utah to invoke the jurisdiction of this Court.

StateLine’s contacts with Utah have been discussed at length throughout this Brief. It is undoubtedly the magnitude of its property leasing, ownership interests, contracts with Utah residents, and StateLine’s advertising and promotional activities in Utah that is significant.

In analyzing StateLine’s relation to the Utah forum, it cannot be overemphasized that StateLine is located in Wendover, a border-town that sits on the Utah-Nevada border. And that Salt



Lake City and the Wasatch front in general is the closest area with a large concentration of population. This fact alone makes this case unique in that a large majority of StateLine's advertising and promotional activities are directed at Utah residents. Consequently, a majority of StateLine's patrons are Utah residents.

StateLine deliberately created continuing obligations between itself and Utah by transacting business in Utah. It is not inconsistent with due process for this court to assert jurisdiction over a party who created a continuing relationship and obligation with another state. Burger King, 471 U.S. at 473 (quoting Travelers Health Ass'n v. Virginia, 339 U.S. 643, 647 (1950)). Because StateLine has "manifestly availed [itself] of the privilege of conducting business [in Utah], it is presumptively not unreasonable to require [it] to submit to the burdens of litigation in [Utah] as well." Burger King, 471 U.S. at 475-76 (citations omitted). Having profited from its interstate activities in Utah, it would be unfair to allow StateLine to escape having to account in [Utah] for consequences that arise proximately from such activities." Id. at 474.

Having established minimum contacts between StateLine and Utah, it is incumbent upon StateLine to "present a compelling case" that other factors make jurisdiction of this court unreasonable. Id. at 477. StateLine avers that its burden of litigating in Utah is too great and that plaintiff could obtain relief from Nevada courts. While StateLine's assertion alone falls short of "compelling," it is unfounded in that burden of plaintiff having to prosecute her case in Nevada is equally as great or greater. Utah has "manifest interest" in providing Plaintiff/Appellant with a convenient forum for redressing injuries resulting from StateLine's negligence. See Id. at 473.

In conclusion, StateLine's activities meet Frontier's three step test for asserting specific personal jurisdiction, and Plaintiff has met the Neways' requirement of establishing a prima facie

showing that the long-arm statute applies. It is clear that Plaintiff Appellant's claim against StateLine for negligence arises out of one of the statute's specifically enumerated acts, namely, the transaction of business. Finally, StateLine has purposefully established minimum contacts with Utah, making this court's jurisdiction over it consistent with federal due process requirements.

### **CONCLUSION**

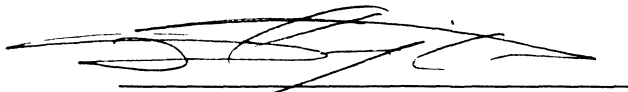
This Court should properly reverse the trial court's erroneous rulings, and remand for trial because:

1. Plaintiff/Appellant has made a prima facie showing that general personal jurisdiction exists over Defendant/Appellee. Plaintiff/Appellant has demonstrated that Defendant/Appellee has substantial contacts with this forum that are continuous and systematic, and that Defendant/Appellee has engaged in substantial and continuous local activity, which is sufficient to reach the requirement of "doing business" within the State of Utah.

2. Plaintiff/Appellant has made a prima facie showing that specific personal jurisdiction exists over Defendant/Appellee. Defendant/Appellee is transacting business within this State, Plaintiff/Appellant's claim arises out of the transacting of business in Utah and Defendant/Appellee's business activities are such that they have purposely availed themselves to the jurisdiction of Utah courts satisfying federal due process requirements.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of June, 1998.

**SIEGFRIED & JENSEN**



Michael A. Katz  
Deven J. Coggins  
Attorneys for the Plaintiff/Appellant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 15<sup>th</sup> day of June, 1998, two copies of the foregoing **APPELLANT'S BRIEF** were mailed, postage fully prepaid, to:

Cynthia Meyer  
Stephen G. Morgan  
MORGAN, MEYER & RICE  
Kearns Building  
136 South Main, #800  
Salt Lake City, Utah 84101



# EXHIBIT “A”

**78-27-24. Jurisdiction over nonresidents — Acts submitting person to jurisdiction.**

Any person, notwithstanding Section 16-10a-1501, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

- (1) the transaction of any business within this state;
- (2) contracting to supply services or goods in this state;
- (3) the causing of any injury within this state whether tortious or by breach of warranty;
- (4) the ownership, use, or possession of any real estate situated in this state;
- (5) contracting to insure any person, property, or risk located within this state at the time of contracting;
- (6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or
- (7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78, Chapter 45a, to determine paternity for the purpose of establishing responsibility for child support.

## EXHIBIT “B”

## **Rule 12. Defenses and objections.**

(a) **When presented.** A defendant shall serve his answer within twenty days after the service of the summons and complaint is complete unless otherwise expressly provided by statute or order of the court. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;

(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

(b) **How presented.** Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) **Motion for judgment on the pleadings.** After the pleadings are closed

## EXHIBIT “C”



STEPHEN G. MORGAN, No. 2315  
CYNTHIA K.C. MEYER, No. 5050  
MORGAN & HANSEN  
Kearns Building, Eighth Floor  
136 South Main Street  
Salt Lake City, Utah 84101  
Telephone: (801) 531-7888  
Fax number: (801) 531-9732

Attorneys for Defendant

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

CHRIS BUDDENSICK,	:	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW
Plaintiff,	:	AND ORDER
	:	
vs.	:	
	:	
STATELINE CASINO, INC., dba	:	Civil No. 9709003891PI
STATELINE HOTEL AND CASINO,	:	
and DOES I-X,	:	
	:	
Defendant.	:	Judge William A. Thorne

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Defendant's Motion to Dismiss Plaintiff's Complaint Based on Lack of Personal Jurisdiction was initially argued before the Court on June 30, 1997. Cynthia K.C. Meyer of Morgan & Hansen appeared for the Defendant, State Line Hotel, Inc., and Michael A. Katz of Siegfried & Jensen appeared for the Plaintiff, Chris Buddensick. After argument, the Court set

the matter for an evidentiary hearing and allowed Plaintiff to engage in discovery. The Court's ruling in that regard was made on the record on June 30, 1997.

The matter was again heard on September 15, 1997, the date set for evidentiary hearing. Ms. Meyer again appeared for the Defendant and Mr. Katz again appeared for Plaintiff. Plaintiff did not present evidence, but had engaged in discovery during the interim between the two hearings.

The Court, having read and considered the memoranda and affidavits submitted by the parties, including the supplemental memoranda containing discovery responses submitted by the parties prior to the September 15, 1997, hearing, having heard and considered the arguments of counsel, being familiar with and having reviewed the file, being fully advised in the premises, and good cause otherwise appearing, now makes the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. Defendant, the State Line Hotel, Inc., is a Nevada corporation which owns and operates the State Line Hotel and Casino in Wendover, Nevada.
2. On July 29, 1995, Plaintiff slipped and fell on the premises of the State Line Hotel and Casino while going through a food buffet line.
3. Defendant advertises its Nevada hotel and casino in Utah.

4. Defendant contracts for goods and services from entities in several states including Utah and Nevada.

5. Defendant owns stock in a Utah corporation, State Line Properties, Inc., which is the general partner of a Utah limited partnership, State Line Properties, Ltd. State Line Properties, Inc., and State Line Properties, Ltd., along with several other entities, are named insureds under the same insurance policy as Defendant.

6. State Line Properties, Inc. and State Line Properties, Ltd. own five parcels of real property in Wendover, Utah, which they lease to Defendant. Two of the parcels are used for parking lot, parking structure, and signage purposes relating to Defendant's hotel and casino business. The city of Wendover leases a storage unit at Decker Field to Defendant.

7. Defendant's leasing of incidental parcels including signage and parking areas while directly related to the carrying-on of its business in Nevada is not an integral part of the business in the sense that the hotel and casino could not continue without it.

8. Defendant does not own any real property in Utah.

### CONCLUSIONS OF LAW

1. Plaintiff's slip and fall and her subsequent cause of action against Defendant did not arise out of Defendant's contacts with the state of Utah; therefore, Utah's Long-Arm Statute, Utah Code Ann. § 78-27-24 does not apply.

2. Defendant does not do business in Utah by virtue of its ownership of stock in State Line Properties, Inc., a Utah Corporation, which does business in Utah. In addition, Defendant does not do business in Utah by virtue of the commonality of stock holders and partners among Defendant, State Line Properties, Inc. and State Line Properties, Ltd.

3. The fact that Defendant, State Line Properties, Inc., and State Line Properties, Ltd., are insured under the same insurance policy is irrelevant.

4. Defendant's advertising and promotional activities in Utah are insufficient to confer general personal jurisdiction over Defendant in Utah courts.

5. The Defendant's leasing of the parcels of real property in Wendover, Utah, is insufficient to confer general personal jurisdiction over Defendant in Utah courts.


6. Overall, Defendant's contacts with Utah are limited in nature (although some are continuous) and are not tantamount to doing business in Utah, such that the exercise of general personal jurisdiction over Defendant would be appropriate.

Having made and entered the foregoing Findings of Fact and Conclusions of Law, the Court hereby

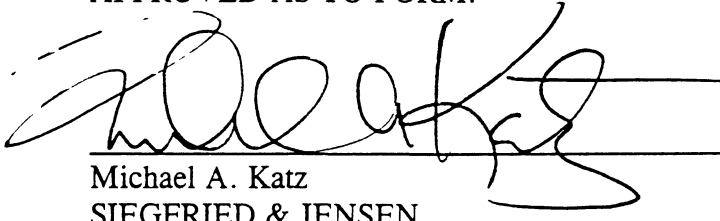
ORDERS that Plaintiff's Complaint be and the same is hereby dismissed with prejudice on the grounds that this Court does not have personal jurisdiction over Defendant, either general or specific.

DATED this 8 day of <sup>CC</sup>~~September~~, 1997.

BY THE COURT:

  
\_\_\_\_\_  
William A. Thorne  
District Judge

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael A. Katz  
SIEGFRIED & JENSEN  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of September, 1997, pursuant to Rule 4-504 of the Utah Code of Jud. Admin., I caused a true and correct copy of the foregoing proposed FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER to be served on the following for approval as to form via first class mail, postage pre-paid:

Michael A. Katz  
SIEGFRIED & JENSEN  
5684 South Green Street  
Murray, UT 84123

Melanni Morgan

# EXHIBIT “D”

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
Third Judicial District

STATE OF UTAH

FEB 11 1998

-o0o-

By S. Oniz  
Deputy Clerk

CHRIS BUDDENSICK,

Plaintiff,

vs.

STATE LINE HOTEL, INC., dba  
STATE LINE HOTEL AND  
CASINO, and DOES I-X,

Defendants.

Case No. 970900389 PI

HEARING ON DEFENDANT'S  
MOTION TO DISMISS

(Videotape Proceedings)

-o0o-

BE IT REMEMBERED that on the 30th day of June,  
1997, commencing at the hour of 10:00 a.m., the above-  
entitled matter came on for hearing before the HONORABLE  
WILLIAM A. THORNE, sitting as Judge in the above-named  
Court for the purpose of this cause, and that the  
following videotape proceedings were had.

-o0o-

**FILED**

A P P E A R A N C E S

FEB 12 1998

For the Plaintiff:

MICHAEL A. KATZ  
Attorney at Law  
Siegfried & Jensen  
5684 South Green Street  
Murray, Utah 84123  
COURT OF APPEALS

For the Defendants:

CYNTHIA K.C. MEYER  
Attorney at Law  
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136 South Main Street  
Salt Lake City, Utah 84101

D U P L I C A T E

1  
ALAN P. SMITH, CSR  
385 BRAHMA DRIVE (801) 266-0320  
SALT LAKE CITY UTAH 84107

ORIGINAL

980052-CA



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P R O C E E D I N G S

THE COURT: The Buddensick versus State Line Casino. Are we ready to go forward with that, or--

MR. KATZ: Yes, we are, your Honor.

THE COURT: Okay. Come on up and we'll go ahead and get that started.

This is Case No. 970900389, Buddensick versus State Line Casino, Inc. I'll ask each of you to make an appearance, if you would, so the record is complete.

MR. KATZ: Michael A. Katz, appearing on behalf of the plaintiff, your Honor.

MS. MEYER: Cindy Meyer on behalf of the defendant.

THE COURT: Okay. Ms. Meyer, this is your motion.

MS. MEYER: Thank you, your Honor.

Your Honor, plaintiff had a slip and fall accident in the State Line Hotel in Wendover, Nevada.

THE COURT: That would be in the restaurant portion?

MS. MEYER: In the restaurant portion of the hotel.

THE COURT: Okay.

1 MS. MEYER: She was in the food  
2 buffet line.

3 That occurred in July of 1995. There's some  
4 reference to 1996, but it really was '95.

5 She filed her lawsuit early this year and State  
6 Line Hotel, Inc. filed a motion to dismiss for lack of  
7 jurisdiction, and specifically, lack of personal  
8 jurisdiction over the State Line.

9 Now, plaintiff--we filed the motion in mid-  
10 March, the plaintiff filed a memorandum in opposition in  
11 mid-May, pursuant to agreements to extend the time, we've  
12 been very lenient with each other that way. We filed our  
13 reply memorandum and then last Friday, the plaintiff sent  
14 to the Court under a cover letter, a couple of orders  
15 from a case that was--

16 THE COURT: (Inaudible)

17 MS. MEYER: In the Patton case in the  
18 United States District Court.

19 You know, the cases are unrelated, other than  
20 the fact that there were injuries on the premises. Those  
21 are the only operative facts that are similar.

22 That the orders are--are not--they don't have  
23 precedential value, they weren't published, they don't  
24 contain the reasoning and procedurally, it seems like,  
25 you know, it's a pretty unfair procedure. There was the

1 two months to file a memorandum in opposition and to  
2 include whatever the--or whatever the plaintiff wanted to  
3 include in the opposition papers and that wasn't done,  
4 and that was the reason we filed a motion to strike on  
5 Friday as well.

6 Let me turn to the motion to dismiss, however,  
7 your Honor. And first, I'd like to address the specific  
8 personal jurisdiction. That arises under Utah's long-arm  
9 statute, which is found in Section 78-27-24.

10 And what it states is that a person, whether or  
11 not a resident of Utah, submits himself to the  
12 jurisdiction of Utah's courts for any causes of action  
13 arising out of, among other things, the transaction of  
14 business in Utah or the causing of an injury in Utah.

15 Now, plaintiff claims that her--her claim arose  
16 from State Line's transacting business in Utah because it  
17 advertises here. She does not claim that it arises under  
18 the injury sub-part of the paragraph, which is the  
19 causing of an injury here, because her injury--her injury  
20 wasn't caused here. Her injury was caused in Nevada.

21 Now, her injury does not arise from and was not  
22 caused by advertising, your Honor. If you look at her  
23 complaint, she says the State Line failed to maintain its  
24 premises in a reasonably safe manner. That's negligence.  
25 That's what caused her injuries. It didn't arise out of

1 any advertising.

2 The plaintiff does rely on a couple of Ninth  
3 Circuit Court of Appeals cases, but neither of those  
4 cases are--are good law, any longer. The first case was  
5 the Alexander vs. Circus Circus case, and that was a case  
6 in which the Ninth Circuit said that but for the  
7 defendant's advertising in the forum, plaintiff would not  
8 have gone out of state and become injured.

9 A petition for re-hearing was filed by the  
10 defendant, however. The petition for re-hearing was  
11 granted, the Ninth Circuit withdrew that opinion that I  
12 just mentioned, that the plaintiff relies on and then  
13 quashed service of process and dismissed the complaint  
14 for lack of personal jurisdiction. So, that case--I  
15 mean, you just can't rely on it at all.

16 The other case was Shute--S-h-u-t-e--vs.  
17 Carnival Cruise Lines. The Ninth Circuit said the same  
18 thing, but for Carnival Cruise Line's promotion in the  
19 State of Washington, Shute would not have gone on the  
20 cruise and become injured in a slip and fall on the--on  
21 the cruise deck in international waters.

22 That case eventually went to the United States  
23 Supreme Court and the Supreme Court reversed. Now, it  
24 reversed for slightly different reasons. There had been--  
25 --there was a clause in the contract which said that all

1 litigation would be filed in--in Florida. The Ninth  
2 Circuit had said that clause is unenforceable and, but  
3 for the promotion, he wouldn't have been injured.

4 The Supreme Court said the clause is  
5 enforceable so, you know, it gets kicked out and--and  
6 needs to be tried in Florida.

7 There are many courts that do not rely on this  
8 "but for" analysis and--and the reasoning is--is very  
9 understandable. There is no cause and effect  
10 relationship between the advertising or the promotion and  
11 the injury itself. It's just too attenuated to make some  
12 kind of connection.

13 And one case that's directly on point is a case  
14 that we cited in our reply memorandum, perhaps in our  
15 memorandum in support as well, called Munley vs. Second  
16 District Court. That was a case filed by a Nevada  
17 resident, Munley, who went to the California side of Lake  
18 Tahoe to ski and he was injured. I think he fell off the  
19 chair lift or something like that. And he claimed that  
20 there was specific personal jurisdiction due to the ski  
21 resort's advertising in Nevada.

22 Now, the ski resort--the Court said all the ski  
23 resort did was promotional activities in Nevada; but it  
24 was a member of the Reno-Sparks Chamber of Commerce, it  
25 sent travel brochures, it advertised in newspapers and so

1     forth. It did, really, quite a bit of advertising.

2             And the Court said, that's not what--even if  
3     that is transacting business, even if we accept that,  
4     that's not what the injuries arose from. And even if the  
5     plaintiff responded directly to those promotional  
6     activities in going to Nevada, that's still not what  
7     caused these injuries.

8             Look at the complaint. What caused his  
9     injuries is the alleged failure to maintain the chair  
10    lift. Same in our case. What caused the injuries is the  
11    alleged failure to maintain the floor around the buffet  
12    food line and not any advertising.

13            So, the plaintiff in this case can only  
14    establish personal jurisdiction over the defendant under  
15    the general jurisdiction notion, not under the long-arm  
16    statute.

17            Now, under the general jurisdiction notion, a  
18    court--and--and let me just interrupt myself. This law  
19    is developed primarily through United States Supreme  
20    Court decisions, State Supreme Court decisions, this is  
21    case law rather than statutory law, most of the time.

22            And a court can have general personal  
23    jurisdiction over an out-of-state defendant for any claim  
24    if the defendant's activities in the State are so  
25    substantial and continuous that the traditional notions

1 of fair play and justice are not violated by bringing  
2 that defendant into the out-of-state courts in order to  
3 litigate those claims.

4 Now, in Mallory Engineering vs. Ted R. Brown &  
5 Associates, a Utah Supreme Court case, the Utah Supreme  
6 Court contrasted the general personal jurisdiction to  
7 specific personal jurisdiction and commented on specific  
8 personal jurisdiction by saying that if the activities of  
9 the defendant are limited in nature or transitory in  
10 duration, then the courts can only assume personal  
11 jurisdiction under the long-arm statute.

12 And that's what we have here. We have  
13 advertising that's limited in nature. It's also  
14 transitory in duration. The State Line operates its  
15 hotel and casino in Nevada, not here in--in Utah. What  
16 it does in Utah is promote the hotel and casino business.

17 The Utah appellate courts have not specifically  
18 addressed these issues, but there are many other cases  
19 that have directly addressed the advertising issues and  
20 whether that's enough to confer general personal  
21 jurisdiction.

22 And one of the most notable cases is a case  
23 that's very similar to this case, which is called State  
24 (inaudible) Circus Circus vs. Pope. It involved an  
25 Oregon resident, Pope, who went to Circus Circus in Reno,

1 I believe, and was injured when a drunken guest pitched a  
2 beer bottle out of a hotel window and--and cracked him in  
3 the head or something like that.

4 Pope then sued Circus Circus in Oregon and  
5 claimed that there was jurisdiction. With respect to  
6 general jurisdiction, Pope made the same argument that  
7 the plaintiff makes in this case, that the hotel and  
8 casino's activities in Oregon were substantial because it  
9 advertised and it maintained a toll-free 800 number.

10 But the Oregon Supreme Court rejected that  
11 argument and said, we're unpersuaded that that's any kind  
12 of substantial activity.

13 Another case, not involving hotels and casinos,  
14 but similar in reasoning is the case called Congoleum  
15 Corp. vs. D.L.W. Acting Gasell Shoft (?), which is a  
16 Ninth Circuit case from 1984. And in that case, the  
17 foreign defendant's in-state activities consisted of  
18 sales and marketing efforts through a California company  
19 is hired to do the sales and marketing.

20 And I jotted down what it did. The--the  
21 California company, which was not the same as--as the  
22 foreign company, solicited orders, it recommended other  
23 sales agents, ordered samples, promoted the D.L.W.  
24 products through mail and show room display and attended  
25 trade shows and sales meetings.



1           And the Ninth Circuit stated that the  
2 maintenance of even a substantial sales force is not  
3 sufficient contact to assert jurisdiction in an unrelated  
4 cause of action. And that's what we have here in this  
5 case--well, we don't have a substantial sales force, but  
6 again, we have--we have promotion.

7           Plaintiff mentioned in the memorandum in  
8 opposition the--the sales office in Salt Lake City. That  
9 sales office is operated by a Utah company called State  
10 Line Properties, Limited, and it takes reservations for  
11 hotel rooms, golf packages, gaming tournaments, shows and  
12 so forth, but it's not the State Line Hotel here doing  
13 business, it's a Utah company, a limited partnership, the  
14 general partner of which is a Utah corporation.

15           We've cited several other cases. We certainly  
16 don't need to go into all of those, but suffice it to say  
17 that in case after case after case, where what we're  
18 talking about is advertising and promotion, the courts  
19 have said--

20                   THE COURT: I'm sorry, Counsel. Let  
21 me back up just to a point that you mentioned a moment  
22 ago. Isn't the Nevada corporation a general or the  
23 majority shareholder of the Utah corporation?

24                   MS. MEYER: I don't believe so. I  
25 think it has been, in the past; but even if it were,

1 what--well, what plaintiff mentioned in the--in the  
2 memorandum in opposition is that the shareholders--there  
3 are common shareholders, I believe.

4 But even--even so, that doesn't, unless we're  
5 trying to break down corporate formalities and there have  
6 been no claims of alter ego or piercing the corporate  
7 veil or anything like that, then we still don't get to  
8 jurisdiction because there's a--a related company that  
9 the--that's actually a Utah corporation; in fact, there's  
10 substantial case law and we cited a case in our reply  
11 memorandum concerning bringing in parent corporations  
12 when there's a subsidiary that is a resident of the  
13 state.

14 Quite often, you know, you have a parent  
15 corporation that owns all of the stock in a subsidiary,  
16 but they're--they're domiciled in different states. And  
17 time after time, the courts have rejected any notion that  
18 because of that ownership alone, you can bring that  
19 parent corporation in. You've got to be able to show  
20 either the specific jurisdiction because of acts arising  
21 in the forum, or the general jurisdiction.

22 Plaintiff relies on a couple of cases from the  
23 Eastern District of Pennsylvania for the proposition that  
24 advertising is enough to establish general jurisdiction  
25 over an out-of-state company.

1           Those cases both involve Walt Disney World, and  
2 as I mentioned, they're both arising out of the Eastern  
3 District of Pennsylvania.

4           The first case is called Weintrol vs. Walt  
5 Disney World. And it recognized a line of cases  
6 involving Walt Disney and apparently arising in  
7 Pennsylvania in which the courts said that there was not  
8 jurisdiction because the advertising alone was  
9 insufficient to confer that general jurisdiction.

10           THE COURT: Wasn't there  
11 transportation involved in that (Inaudible)

12           MS. MEYER: Well, yeah, in that case  
13 and--and the Court distinguished those other cases and  
14 said there's a lot more going on than just advertising.  
15 We have Disney people, you know, conducting a seminar in  
16 Pittsburgh, they're coming in for college relations, I  
17 think they were recruiting college students to go down  
18 and work. They sent representatives for professional  
19 staffing purposes and sent the publicity staff to  
20 Pennsylvania and for all of those combined reasons, the  
21 court said that--that's pretty intentional--well,  
22 intentional isn't the word, but it--it's substantial  
23 conduct and that's enough to confer general jurisdiction.

24           THE COURT: It's the corporation  
25 choosing to do business--

1 MS. MEYER: That's right.

2 THE COURT: --in Pennsylvania.

3 MS. MEYER: That's right. Actually  
4 going to Pennsylvania and conducting business, rather  
5 than just promoting a theme park in Florida.

6 Same thing in the Gavigan case, versus Walt  
7 Disney World. There was--there was similar purposeful--  
8 that was the word I was looking for--conduct in  
9 Pennsylvania beyond mere advertising that caused that  
10 court to say again, we--we have personal jurisdiction  
11 over this company.

12 And here in the state--in this case, the only  
13 evidence that we have is that the State Line advertises.  
14 Plaintiff hasn't submitted any evidence concerning the  
15 amount of advertising or the extent of advertising, other  
16 than to use strong adjectives in--in the memoranda.

17 And even under these authorities relied on by  
18 the plaintiff, again, merely advertising is not enough to  
19 confer general jurisdiction.

20 Your Honor, I have some of the main cases we  
21 relied on, if it would be helpful to the Court, I'd like  
22 to hand that up. Would that be all right?

23 THE COURT: Okay.

24 MS. MEYER: And let me just for the  
25 record indicate that the cases I've handed up to the

1 Court are the Circus Circus vs. Pope, the Congoleum vs.  
2 the D.L.W., and the long German name, Price and Sons vs.  
3 the Second District Court and the Munley vs. the Second  
4 District Court.

5 Your Honor, the relief we're asking for is that  
6 the Court dismiss the complaint for lack of personal  
7 jurisdiction and strike plaintiff's submission to the  
8 Court of last Friday.

9 Thank you.

10 THE COURT: Mr. Katz?

11 MR. KATZ: Thank you, your Honor.

12 Initially, permit me to address, please, the  
13 allegations and the arguments made concerning the motion  
14 to strike.

15 The orders that we submitted from Judge Sam, I  
16 did not submit those claiming that they are binding  
17 precedent on this Court. They are, however, indicative  
18 of Judge Sam's ruling in an identical motion to dismiss.  
19 In that case, they also had a motion for change of venue  
20 because it was in the Federal Court and could have  
21 transferred over to Nevada; the fact is, Judge Sam denied  
22 those motions and the memorandums of the parties were  
23 almost identical, the issues raised were almost identical  
24 and Judge Sam ruled against defendant in that case. That  
25 was the purpose of my showing them to you and submitting

1    them for your review.

2               The question raised by the motion is whether or  
3   not we have met the standards needed for either specific  
4   or general jurisdiction over the defendant. Under the  
5   general jurisdiction provisions, the question becomes  
6   whether or not the defendant conducts substantial and  
7   continuous local activity.

8               And as the memoranda reflect, we believe that  
9   probably the strongest evidence of substantial and  
10   continuous local activity is defendant's advertising  
11   activities within the State; however, in contrary to the  
12   cases that the defendant primarily relies upon, which by  
13   the way, are mixed, as the memoranda indicate. Some  
14   courts have held that advertising alone is sufficient.  
15   Nothing else.

16              The cases are mixed. We've cited a bunch,  
17   they've cited a bunch. I think they're--I think our  
18   cases are, frankly, more persuasive, but we think we've  
19   got a lot more facts to rely upon to show continuous and  
20   local activity. And I'd like to go over those with the  
21   Court--

22                       THE COURT:   Okay.

23                       MR. KATZ:   --if I might, because I  
24   think that is the central inquiry raised by the motion.

25                       Number one, we do have common ownership and

1 management of the two entities. One, a Utah corporation,  
2 State Line Properties, and State Line Hotel, the Nevada  
3 corporation.

4 In fact, their memoranda states that State Line  
5 Hotel is the sole owner of State Line Properties. That  
6 is in the affidavit of Larry Herrin, which we attached as  
7 an exhibit to the memorandum.

8 It states that they own the stock, period.  
9 Over and out. It's a wholly-owned subsidiary. And while  
10 we admit that owning a subsidiary, by itself, is not  
11 adequate, it does reflect continuous and substantial  
12 local activity. Not just advertising. Wholly-owned  
13 subsidiary is a Utah corporation. That Utah corporation  
14 owns property in the State of Utah.

15 Mr. Herrin's affidavit, which is attached as  
16 Exhibit B, also indicates there's common stockholders  
17 among the corporation and common management.

18 Mr. Jim Smith, Mr. Herrin, himself, who  
19 submitted the affidavit in the Federal Court case.  
20 There's a lot more here than just advertising activities,  
21 which your Honor is probably familiar with if you--if you  
22 drive the freeways around Salt Lake. You've seen the  
23 billboards, you've seen the ads in the newspapers.

24 But we believe there's even more, your Honor.  
25 If I might approach and I've provided Ms. Meyer with

1 copies, these are some other submittals that were in  
2 evidence before Judge Sam.

3 What I've handed you, your Honor, is the  
4 accident report that was submitted in the Patton case.  
5 You'll note it says State Line Hotel Casino and  
6 Convention Center. Wendover, Utah, your Honor, is the  
7 address.

8 I would also like to submit--

9 THE COURT: Well, it's a post office  
10 box.

11 MR. KATZ: Yes. But it shows  
12 activities, continuous activities within the State of  
13 Utah. They maintain their post office box here, your  
14 Honor.

15 I would also like to hand you a supplemental  
16 under Federal Rule of Civil Procedure 26(e) that was sent  
17 in by the defendant. It states as one of their witnesses  
18 in the Patton case, State Line Hotel, Wendover, Utah.  
19 Once again, they're claiming that they're located in  
20 Wendover, Utah.

21 And if I might also submit defendant's Rule  
22 26(a) disclosures in the Federal Court case. And these  
23 are additional accident reports, your Honor, that were  
24 submitted in connection with Patton.

25 And what I'd like you to note on these, if you



1 would, please, is the fax, information contained at the  
2 top of the statements. State Line Hotel, Fax No.  
3 801-532-4090. That's a Utah area code, your Honor, for  
4 the State Line Hotel. Not State Line Properties, the  
5 Utah corporation, State Line Hotel.

6 So, we're not just saying they advertise, your  
7 Honor, although they do substantial and continuous and  
8 costly, undoubtedly costly advertising; they have most of  
9 their employees residents of the State of Nevada. That's  
10 also indicated in the 26(a) disclosures. They list three  
11 or four witnesses, all of them are employees who have  
12 Utah residences.

13 They maintain post office boxes in the State of  
14 Utah. They have wholly-owned subsidiaries in the State  
15 of Utah. They have common shareholders with Utah  
16 corporations and we believe those shareholders are  
17 residents of the State of Utah.

18 And they maintain telephone numbers and fax  
19 machines in the State of Utah, which I think very clearly  
20 raises an inference that they maintain offices in the  
21 State of Utah. They can't have it both ways.

22 I'd like to point out just a couple other  
23 things, your Honor, that I don't believe were addressed  
24 very much in the memorandum. We believe there are the  
25 substantial and continuous local activities which support

1 the Court's exercise of jurisdiction, and I think perhaps  
2 to preface this comment, I should note that the long-arm  
3 statute is to be construed as broadly as possible, so as  
4 to confer jurisdiction over non-residents. So, we've got  
5 that policy.

6 And we also have the court stating, and I'm  
7 specifically referring to the very recent case of  
8 Anderson vs. American Society of Plastic Surgeons, an  
9 expansive grant of jurisdictional power is conferred upon  
10 the Courts of this case (sic) over non-residents.

11 So, we think the general policy is that,  
12 plaintiffs get the benefit of the doubt in cases like  
13 this. But as the submittals of the parties recognize,  
14 there's affidavits, there's--there's exhibits. There--we  
15 believe there should be depositions. We believe that if  
16 they're going to claim that they don't do anything in the  
17 State, we are entitled to conduct discovery on that issue  
18 and perhaps this motion is presently premature.

19 And once again, we rely upon, to support that  
20 principle, the recent case of Anderson vs. American  
21 Society of Plastic Surgeons, the citation on that is 807  
22 P.2d 825. That case stands for the proposition that this  
23 is a fact-laden inquiry. If there are disputes and once  
24 again, the benefit of the doubt is given the plaintiff as  
25 it would be, for instance, on a--on a summary judgment

1 motion. The facts are construed in our favor; but  
2 nonetheless, if the defendant can raise some evidence  
3 that general jurisdiction should not be exercised, this  
4 is the kind of thing that should be resolved at trial.  
5 You try the jurisdictional facts at the time you try the  
6 underlying facts.

7 Or another option that the American Society of  
8 Plastic Surgeons case gives your Honor is, since there  
9 are disputes, since it is an intricate issue, competing  
10 claims, competing allegations, your Honor should perhaps  
11 conduct an evidentiary hearing and that's another option  
12 that the District Court is given by the Supreme Court in  
13 the plastic surgeons case.

14 We think--you don't have to do that, your  
15 Honor. We think we've given you a number of documents  
16 that reflect the fact that State Line Hotel expects to be  
17 hailed into the courts of this State; they have Utah  
18 subsidiaries, they have Utah officers, they have Utah  
19 shareholders, they conduct substantial activities beyond  
20 advertising, we're not just relying on advertising, we're  
21 relying on a whole series of interactions with Utah  
22 residents, with Utah courts, with Utah business, they  
23 contract for services here. They contract for food, they  
24 buy food in the State of Utah.

25 And unlike all of the cases that either side

1 cites, it's significant to note that this is a border  
2 town. Most of Wendover, at least, I believe most of the  
3 residences in Wendover, actually lie on the Utah side of  
4 the--of the border. It--it's kind of an artificial  
5 distinction, I guess is what I'm saying.

6 In closing, your Honor, I would like to point  
7 out one other fact that does weigh in our favor, and that  
8 is the convenience of the parties. If their officers,  
9 managers, employees are residents of Utah, it's far more  
10 convenient for both sides, not just the plaintiffs, but  
11 both sides, to litigate this case in the State of Utah.

12 For instance, the plaintiff's treating  
13 physicians, who will undoubtedly have to be deposed, are  
14 all Salt Lake residents. The plaintiff resides here. It  
15 would be far more convenient for both sides, to litigate  
16 this case in Utah and convenience is a very important  
17 factor that the Court recognizes in the Mallory vs. Ted  
18 Brown case, which the defense already directed your  
19 attention to.

20 State Line Hotel, albeit a Nevada corporation,  
21 has substantial contacts with Utah. They do conduct  
22 continuous local activities here. They should expect to  
23 be hailed into the Utah courts for suit.

24 We believe the motion to dismiss should be  
25 denied.

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THE COURT: Ms. Meyer?

MS. MEYER: Thanks, your Honor.

Now, with regard to motion to strike, if Judge Sam's orders aren't precedents and they're merely interesting and shouldn't have been submitted.

And I'd like to clarify something. There is not one case in either memoranda that was submitted to the Court in which any court held that mere advertising is enough to confer general jurisdiction. Even in the Boone vs. Sulphur Creek case cited by the plaintiff, the court found that there was other purposeful conduct besides advertising on the part of the owner of the resort in going to Indiana, that went beyond advertising.

Your Honor, these submissions--I mean, you know, this is another reason that we have rules with respect to filing a motion and filing a memorandum and having the reply time. If these had been attached to the memorandums, if they'd been argued in the memorandums, I could have responded to them in the reply. As it is, what I need to do is--is make some kind of a proffer and--and hope that that's sufficient.

In another case that we have, one of the things we learned about the P.O. boxes is that, at least as of a couple of years ago, I don't know if it's still the case now; there was not a post office on the Nevada side of

1 the town of Wendover, and there was not door-to-door mail  
2 delivery. So, if anyone wanted to receive mail, they had  
3 to have a post office box in the Wendover, Utah post  
4 office. That's just the way it worked in Wendover. That  
5 isn't substantial contact with the State, that's just the  
6 way it was in that small town.

7 It's kind of like Park City. A lot of people  
8 know that if you want a good mail delivery--and I  
9 understand this is changing lately--that you need to get  
10 a post office box. And--and as I said, in Wendover, they  
11 didn't even have the door-to-door mail delivery, so they  
12 had to have a post office box. That's not a physical  
13 address.

14 There is no question and there's no dispute  
15 that the entirety of the State Line Hotel and Casino  
16 premises are located on the Nevada side. I don't know--  
17 you know, I don't have an answer to the Fax number other  
18 than, you know, perhaps it came from--actually came from  
19 the State Line Properties office; but if you look at the  
20 State Line letterhead, where it has the post office box  
21 in Utah, it has the 702 number.

22 If you call out there and when I've called out  
23 there, when I call my client, I call Nevada, I call 702  
24 and--and whatever the phone number is.

25 Same with the employees who were going to

1 testify in the Patton case. The addresses, you know, we  
2 have to give addresses under the Rule 26(a)(1)  
3 disclosures in Federal Court, their addresses are the  
4 post office boxes because that's the only way they can be  
5 reached. There are street addresses apparently, but if  
6 you want to mail something to them, that's--that's the  
7 way they need to be reached.

8 I think that was--those were really the only  
9 issues that were raised. Oh, no. On the supplemental  
10 disclosure under Rule 26, it says Rule 26(e) in the  
11 Patton case, we make reference to Steve LeMaster, State  
12 Line Hotel, Wendover, Utah.

13 That's a typographical error, for one of two  
14 reasons, and I don't remember where LeMaster was at the  
15 time. If he were at the State Line Hotel that we're  
16 dealing with in this case, that's in Nevada, and so the  
17 Utah's a typographical error.

18 There is, however, a hotel on the Utah side  
19 called the State Line Inn. Now, if that's the case, that  
20 would be Utah, but then State Line Hotel would be wrong,  
21 it should have said State Line Inn; but again, there's no  
22 question. Physically, State Line Hotel and Casino is in  
23 Nevada. Physically, plaintiff's injury occurred in  
24 Nevada, not in Utah.

25 The plaintiff makes some argument that--that

1 this motion may be premature under--under Rule 12(b). We  
2 certainly have the right to file an immediate motion to  
3 dismiss for lack of jurisdiction.

4 Plaintiff did not come into Court and seek to  
5 do any discovery and could have done so on this issue.  
6 Plaintiff has the burden of proof, not the defense, once  
7 the jurisdiction is contested.

8 It--it, I think would be improper to proceed  
9 with an evidentiary hearing here today and I--I don't  
10 think the plaintiff is really proposing that we do so;  
11 but again, bringing in all of this additional evidence  
12 and not following the procedures really is unfair.

13 The fact that Wendover is a border town isn't  
14 significant. There are lots of border towns. And the  
15 significance of state lines and whether we respect state  
16 lines for jurisdictional purposes, and the Utah Supreme  
17 Court in Worldwide Volkswagen says, we don't ignore state  
18 lines, we cannot do that under a jurisdictional analysis.

19 So, you know, the fact that--that there are  
20 residents on both sides of the--of the line is really  
21 insignificant. The--the injury occurred in Nevada and  
22 the question is, do we bring this Nevada corporation in  
23 to Utah?

24 Again, the fact that there are common  
25 shareholders of the--the Utah and the Nevada entities is



1 really insignificant. In order to break down those  
2 corporate barriers, the plaintiff has to get in, under  
3 some kind of an alter ego or pierce the corporate veil  
4 argument, hasn't made an kind of an argument along that  
5 line, so common ownership is completely irrelevant and  
6 immaterial.

7 And finally, your Honor, this is not a foreign  
8 non-convenience argument or case. This is a jurisdiction  
9 case. Granted, there would be some inconvenience to  
10 plaintiff in going to Elko to try this case. Certainly,  
11 there's some inconvenience to the State Line people,  
12 including any employees who work out there who would be  
13 witnesses in coming to Salt Lake to try this case.

14 But again, it's not a foreign non-convenience  
15 issue, it's a jurisdiction issue and the jurisdictional  
16 principles have to take precedence over the convenience  
17 of the parties.

18 THE COURT: Thank you.

19 Let me state for the record that if it were  
20 simply a question of wholly-owned subsidiary or common  
21 shareholders or officers who live in Utah or employees  
22 who live in Utah, that would not be enough to convey  
23 jurisdiction.

24 I'm going to rule as well that advertising  
25 alone is also insufficient to convey jurisdiction to this

1 Court.

2 I am concerned, though, I think if post office  
3 box is in Utah and there are options otherwise available,  
4 telephone lines, faxes, if they were doing business in  
5 Utah, that would be sufficient to give this Court  
6 jurisdiction. Because there appears to be some  
7 significant factual questions around those issues, I am  
8 going to set it for an evidentiary hearing on the  
9 question of whether the State Line Casino does in fact do  
10 business within the State of Utah, take advantage of  
11 doing business within the State of Utah, but that would  
12 have to exceed advertising, having owners in common,  
13 having employees or managers who live in the State,  
14 that's--that's clearly not sufficient.

15 Jolene, can you hand me the scheduling book?

16 How soon, Counsel, are you going to be ready to  
17 do--

18 MR. KATZ: Well--

19 THE COURT: --a short hearing on that  
20 question?

21 MR. KATZ: I--I think the hearing  
22 should be short; however, I do think we should be  
23 entitled to limited discovery on that issue. I mean, at  
24 least a deposition of the manager and perhaps, you know,  
25 some sort of 30(b)(6) designated representative of the

1 hotel. I think--I think that's the bare minimum.

2 THE COURT: How long do you think you  
3 need to do that? Thirty days? Sixty days?

4 MR. KATZ: I was going to say 45  
5 days, so, split the difference between 30 and 60.

6 THE COURT: Is that agreeable, Ms.  
7 Meyer?

8 MS. MEYER: Sure.

9 THE COURT: Okay. We'll look to set  
10 this hearing with the understanding that limited  
11 discovery on the question of doing business within the  
12 State of Utah not related to advertising or common  
13 stockholders, but simply the question of whether they  
14 exercise the privilege of doing business within the  
15 State, discovery on that will cut off in 45 days.

16 That will put us to August 18th, the discovery  
17 cut-off. And hear this some time after, beginning of  
18 September; is that agreeable?

19 How long do you think you need? A half an  
20 hour?

21 MR. KATZ: Oh, I think an hour.

22 MS. MEYER: I--

23 MR. KATZ: They're going to put a  
24 witness on, I'm sure.

25 MS. MEYER: Well, you can put a

1 witness on. I think it's your--your burden.

2 MR. KATZ: Well, it may be my burden,  
3 but are you going to put a witness on?

4 MS. MEYER: Depends on what you do.

5 MR. KATZ: Well, I guess you won't  
6 know 'til I get here, then.

7 MS. MEYER: Right. Certainly an  
8 hour, your Honor.

9 THE COURT: Okay. How about  
10 September 15th?

11 MS. MEYER: I think I'm fine on that,  
12 your Honor. I don't have my calendar with me, but I  
13 don't think I have a conflict.

14 MR. KATZ: I--I'm open that day, your  
15 Honor.

16 THE COURT: Okay. Set it at 11:00  
17 o'clock then.

18 MS. MEYER: Uh huh.

19 THE COURT: And so that we avoid the  
20 question of surprise, Mr. Katz, by the 18th of July, can  
21 you designate whatever witness you're going to call for  
22 that?

23 MR. KATZ: I may not know until I do  
24 that deposition, your Honor, and I mean, I--I've got a  
25 pretty open calendar. I'm sure I can get that deposition

1 scheduled, you know, like I say, a 30(b)(6) deposition in  
2 the next couple weeks; but that could depend on who they  
3 designate and various other issues.

4 MS. MEYER: Your Honor, if it helps,  
5 I don't--I don't care if he doesn't designate State Line  
6 type witnesses until the end of this discovery period, as  
7 long as I know who--

8 THE COURT: Okay.

9 MS. MEYER: --he'll call on his own  
10 side, so that I have some opportunity for some discovery  
11 as well.

12 THE COURT: By the 18th of July,  
13 designate the non-State Line people so that she has the  
14 chance--

15 MR. KATZ: That, I can do.

16 THE COURT: Okay. Okay. Thank you,  
17 Counsel.

18 MR. KATZ: Thank you, your Honor.

19 (Whereupon, this hearing was concluded.)  
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TRANSCRIBER'S CERTIFICATE

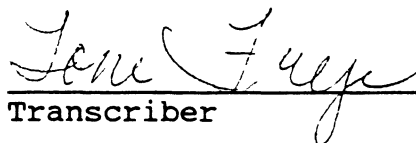
STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

I, Toni Frye, do hereby certify:

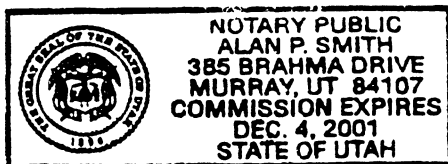
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I do further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party or of the attorney of either party, or otherwise interested in the event of this suit.

Dated at Salt Lake City, Utah, this 5th day of December, 1997.

  
Transcriber

Subscribed and sworn to before me this 5th day of December, 1997.



  
Notary Public

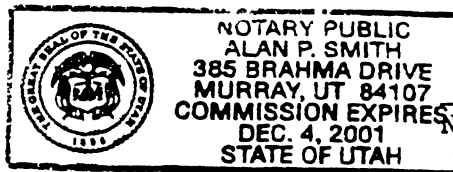
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I, Alan P. Smith, Certified Shorthand Reporter,  
Notary Public and a Certified Court Transcriber of Tape  
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I do further certify that I am not counsel,  
attorney or relative of either party, or clerk or  
stenographer of either party or of the attorney of either  
party, or otherwise interested in the event of this suit.

Dated at Salt Lake City, Utah, this 10th day of  
December, 1997.



( S E A L )

Notary Public

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
Third Judicial District

STATE OF UTAH

FEB 11 1998

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By S. Oniz  
Deputy Clerk

CHRIS BUDDENSICK,  
  
Plaintiff,  
  
vs.  
  
STATE LINE HOTEL, INC., dba  
STATE LINE HOTEL AND  
CASINO, and DOES I-X,  
  
Defendants.

Case No. 970900389 PI  
  
HEARING ON DEFENDANT'S  
MOTION TO DISMISS  
  
(Videotape Proceedings)

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BE IT REMEMBERED that on the 15th day of  
September, 1997, the above-entitled matter came on for  
hearing before the HONORABLE WILLIAM A. THORNE, sitting  
as Judge in the above-named Court for the purpose of this  
cause, and that the following videotape proceedings were  
had.

-o0o-

A P P E A R A N C E S

For the Plaintiff: MICHAEL A. KATZ  
Attorney at Law  
Siegfried & Jensen  
5684 South Green Street  
Murray, Utah 84123

For the Defendants: CYNTHIA K.C. MEYER  
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FEB 12 1998

D U P L I C A T E

ORIGINAL

COURT OF APPEALS



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1                                    P R O C E E D I N G S

2  
3                                    THE COURT:    --here in Case No.  
4 970900389, Buddensick vs. State Line.

5                                    Counsel, if you'd make an appearance so the  
6 record's complete?

7                                    MR. KATZ:    Michael Katz, appearing on  
8 behalf of the plaintiff, your Honor.

9                                    MS. MEYER:    Cynthia Meyer on behalf  
10 of the defendants.

11                                   THE COURT:    Okay.    This is a  
12 continuation from a hearing several weeks ago, a month  
13 ago, relating to the question of whether the Court had  
14 jurisdiction over a slip and fall at the casino in  
15 Wendover.    Okay.

16                                   Counsel, who wants to--Mr. Katz?

17                                   MR. KATZ:    Thank you, your Honor.    I  
18 just asked Cindy who really (inaudible) and she said I  
19 did and so I'll accept that burden, your Honor.

20                                   I--I assume you have received our supplemental  
21 memorandum and that submitted by the defendant.

22                                   THE COURT:    I have and I've reviewed  
23 it, although I have not looked at all the exhibits, but I  
24 accept your representation of what they were.

25                                   MR. KATZ:    Thank you.    And they are

1 rather lengthy, your Honor, so I--I tried to summarize  
2 them at least in some fashion.

3 THE COURT: Would you push that mike  
4 down towards you? I think that camera will switch to  
5 you. Okay. Go ahead.

6 MR. KATZ: Thank you, your Honor.

7 I--I think fairly characterized, the exhibits  
8 and answers to interrogatories that were uncovered during  
9 the discovery phase of this case show clearly that the  
10 defendant conducts a substantial and important and  
11 significant amount of business in the State of Utah, and  
12 that that business, although largely unrelated to the  
13 cause of action that is the subject of this lawsuit, that  
14 being a slip and fall, is more than ample for this Court  
15 to exercise a general jurisdiction over the defendant.

16 And I think the--the allegations of specific  
17 jurisdiction were largely covered by the original  
18 memorandum, so I would like to focus my comments on the  
19 general jurisdictional claims that we believe arise from  
20 the evidence produced during discovery.

21 That evidence shows that in addition to  
22 advertising, sales and promotional-type activities that  
23 we relied upon during the initial filing, that here, the  
24 defendant, by and through various subsidiaries--and I  
25 won't go into these ownership issues that the--that the

1 Court wanted us to--to avoid--but nonetheless, the  
2 documents produced show that defendant, State Line Hotel  
3 leases no less than six parcels of real property in the  
4 State of Utah from either State Line Properties, Ltd., or  
5 State Line Properties, Inc., both of which are Utah  
6 entities.

7 So, they've got agreements with Utah entities  
8 as to those pieces of property, but more importantly,  
9 they occupy and possess that property under these leases.

10 They also have property under lease with the  
11 City of Wendover and consequently, although they don't  
12 own that property, if we avoid this--this fuzzy gray line  
13 of subsidiary corporations, I--I find it frankly a  
14 little--a little silly for the defendant to claim that  
15 they would be surprised to be hailed into court in the  
16 State of Utah.

17 If there was a dispute about any of those  
18 leases, about the ownership of the underlying property,  
19 those claims would have to be litigated in Utah. A  
20 Nevada court wouldn't have any jurisdiction over them  
21 because it involves real estate located in the State of  
22 Utah. We think that shows the transaction of substantial  
23 business in the State of Utah.

24 In addition, your Honor, documents disclosed by  
25 the defendant shows that they have contracts with Utah

1 companies. In addition to all of those leases that we  
2 exhibited with our memorandum, they have a contract with  
3 American Linen and they service--they service the  
4 businesses out there.

5 Furthermore, they contract for cash register  
6 services out there, as I understand one of the other  
7 documents they produced.

8 And finally, we have an insurance policy that  
9 not only covers State Line Hotel as the primary insured,  
10 it lists a number of other entities which are Utah  
11 entities, we know that from other materials, but it also  
12 shows a big long list of Utah properties.

13 And frankly, we did not depose any of the  
14 officers to find out whether those were the same  
15 properties that are the subject of the lease, some may  
16 be, some may not be; the fact is, substantial,  
17 significant business in the State of Utah.

18 I think it's kind of funny that the leases were  
19 also drafted by attorneys in the State of Utah,  
20 specifically it looked to me like Van Cott, Bagley,  
21 Cornwall & McCarthy; that signatures were notarized by  
22 Utah notaries and--and your Honor--and let me represent  
23 me to you that I'm not only referring to the exhibits  
24 attached to our memorandum, but other leases that were  
25 produced covering Nevada properties were also drafted and

1     notarized by Utah entities.

2             We also know from the answers to  
3     interrogatories, that in fact, State Line has been hailed  
4     into Court in Utah in at least two other cases in the  
5     recent past, so they shouldn't be surprised by these  
6     proceedings.

7             And I suppose one thing that kind of bothered  
8     me was some statements made by defendants during their  
9     initial filings, and I'd like to specifically refer to  
10    the affidavit of Mr. Perry.

11            And it states the following: State Line Hotel  
12    was incorporated in the 1950's in the State of Nevada.  
13    By the way, those articles of incorporation were executed  
14    in Utah.

15            And it owns property in Nevada and not in any  
16    state. Well, I suppose that's accurate, your Honor. But  
17    it sure leases a heck of a lot of property in Utah. And  
18    specifically, it does not own any property in Utah, it  
19    does own property in Wendover; it leases property in  
20    Utah, your Honor.

21            And then it goes on to state that the business  
22    of the State Line Hotel, Inc., is to operate the State  
23    Line Hotel and Casino. Other than advertising and  
24    promotion of its Nevada hotel and casino, State Line  
25    Hotel, it does no business in Utah or neighboring states.

1           Your Honor, I humbly submit that that is a  
2 flat-out misrepresentation. It leases properties in Utah  
3 and it does other business in Utah including business  
4 with attorneys in Utah, business with linen supply and  
5 nation--and cash register companies in Utah. This is  
6 false. They lease property here, they conduct  
7 significant business here.

8           One thing I wanted to say in closing, your  
9 Honor, is the cases that have been relied upon by both  
10 the plaintiff and defendant are really very different  
11 than our case and there's a unique aspect and  
12 circumstance of our case, which I think is an underlying  
13 current of what's gone on here.

14           Bradford vs. Nagel, for instance, involves a  
15 Mississippi resident and a Utah corporation, and then we  
16 have all those advertising cases that were relied upon in  
17 our opening memorandum because we were talking about  
18 advertising activities. A Pennsylvania resident gets  
19 injured at a--a Florida Walt Disney World or something  
20 like that.

21           What we have here is a Nevada corporation that  
22 owns a borderline state casino, it owns the property on  
23 the Nevada side, leases a bunch of property on the Utah  
24 side.

25           I don't think anybody would dispute the fact

1 that the vast bulk of its customers, clients, business is  
2 solicited from Utah and comes from Utah. It has numerous  
3 business entanglements with Utah entities, including  
4 wholly-owned subsidiaries; it transacts a ton of business  
5 here and should not be shocked, in fact, it should  
6 totally expect to be sued in Utah courts, including for  
7 claims such as the slip and fall, which is at issue in  
8 this case.

9 On that basis, your Honor, we think the motion  
10 to dismiss should be denied and there are ample reasons  
11 and justifications for the Court to exercise jurisdiction  
12 over this defendant.

13 THE COURT: Just as an aside,  
14 assuming the Court has jurisdiction, is the venue  
15 properly here or in--

16 MR. KATZ: Well--

17 THE COURT: Where?

18 MR. KATZ: --that's a good question,  
19 your Honor. I think venue--it's arguable that --that  
20 because all of this property is in Tooele County, the  
21 leasing--excuse me, the leases are in Tooele County, in  
22 fact, they were recorded with the Tooele County Recorder,  
23 I note on a number of the documents, I think venue gets  
24 into a lot of convenience issues.

25 And in fact, actually the jurisdiction raises

1 convenience issues, too, and--and a couple of the courts,  
2 the decisions mention that.

3 When you look at convenience, I think you  
4 really want to--to keep the case in Salt Lake County, and  
5 let me--let me explain why. Most of the witnesses,  
6 particularly the fact witnesses, were other customers at  
7 the casino. They're all from Salt Lake County, and we  
8 know that from the accident reports that were provided.

9 The plaintiff is from Salt Lake County. The  
10 defendant, it looks like most of their corporate officers  
11 are located in Salt Lake County--maybe not most, but at  
12 least some of them to the extent we may need to do like a  
13 36(b) type deposition, they're mostly in Utah.

14 And I think importantly, most of the doctors  
15 who treated the plaintiff are located in Salt Lake County  
16 as well. So, I--I think that's--that's a legitimate  
17 reason to--to keep things in Salt Lake County.

18 Thank you very much, your Honor.

19 THE COURT: Ms. Meyer?

20 MS. MEYER: Thank you, your Honor.

21 This was set for an evidentiary hearing and the  
22 plaintiff chose to call no witnesses at this time, and so  
23 we responded.

24 As the Court knows, this is a personal injury  
25 case that occurred on premises. It's a premises



1 liability case. The plaintiff's injuries and cause of  
2 action don't arise out of any of the State Line's  
3 contacts with Utah and I think that plaintiff is  
4 essentially, although maybe not completely, conceding  
5 that.

6 And even in this case, if the plaintiff went to  
7 Nevada to gamble in response to advertising, there's  
8 still not a connection between the advertising and the  
9 injury, because that depends on something else. It's,  
10 you know, whether or not the defendants were maintaining  
11 their--their property in a reasonably safe manner.

12 Your Honor, the--the cases that were relied on  
13 by plaintiff in this last brief are--are indeed very  
14 different from the situation that we have here. The  
15 cases that were relied on, the--the--oh, I can't remember  
16 the name of the one, Rocka-Vaughn or something like that,  
17 in the last memo, and the Bradford vs. Nagel, involved  
18 contracts between residents and non-residents, and then  
19 breach of contract and related causes of action arising  
20 out of those contracts.

21 The entire analysis in both of the cases was  
22 under the (inaudible) statute and in this case, there is  
23 only jurisdiction if it--if there is general  
24 jurisdiction; so those cases really don't apply.

25 But I do disagree with the statements that most

1 of the cases that have been relied on are really  
2 different from this case. There are some cases that--  
3 that are similar and those are the cases involving  
4 really, the resort destination type of places; you know,  
5 some of the Disney cases did deal mostly with advertising  
6 and--and we're past that issue now.

7 But one of the cases that we cited earlier in  
8 either our main memorandum or our reply for the June  
9 hearing is the case called Nunley vs. Second District  
10 Court. That involved the Lake Tahoe--

11 THE COURT: Is that the Oregon--

12 MS. MEYER: No. That was Circus  
13 Circus vs. Pope, I think.

14 THE COURT: Okay.

15 MS. MEYER: The Nunley vs. Second  
16 District Court is the Lake Tahoe ski area where the  
17 Nevada resident goes to the California side, skis at Lake  
18 Tahoe, is injured, sues in Nevada and the Court says, no,  
19 there's not enough here for general jurisdiction, even  
20 though the--the ski resort itself, I think it was called  
21 North Star, has been a continuous member of the Reno-  
22 Sparks, Nevada Chamber of Commerce for many years and  
23 advertises here and sends brochures to sports stores and  
24 everything else. Even though there has been that  
25 continuous membership of the Chamber of Commerce, that's

1 not enough for general jurisdiction and it didn't arise  
2 out of any of the contacts with Utah.

3 Plaintiff says, well, yeah, but they own prop--  
4 or they lease property in Utah. Yeah. There are a few  
5 isolated parcels in Wendover, Utah, where they do lease  
6 some property and certainly, I think the State Line  
7 would--would expect to go to Court in Utah if they didn't  
8 pay rent or if there was some kind of a landlord-tenant  
9 dispute. Of course, they would expect, but that again  
10 arises under specific personal jurisdiction, it arises  
11 under the long-arm statute.

12 That doesn't mean that because they may expect  
13 to go to Court over the lease itself, that they would  
14 expect to go to Court in Utah over a personal injury that  
15 occurred on their facility in Nevada.

16 And--and what we've learned in this discovery  
17 is that there are isolated and transitory relationships.  
18 The State Line does not do business in Utah. There are  
19 contacts, to be sure; but it's business is operating a  
20 casino. I mean, that's a Nevada-type of business.  
21 That's the type of business that can't even be conducted  
22 in Utah.

23 And to say that--that leasing a piece of  
24 property or contracting with American Linen to take care  
25 of the paper towel needs or the cloth towel needs as

1 doing business is--is stretching what is meant under the  
2 jurisdiction case law.

3 That doing business means actually conducting  
4 business. This isn't Albertson's. This isn't an Idaho  
5 grocery store chain that has 20 grocery stores in the  
6 Salt Lake Valley. This isn't the Holiday Inn that has  
7 800 hotels.

8 THE COURT: Assuming it is  
9 Albertson's, somebody gets hurt in a store in Boise. Can  
10 they sue here?

11 MS. MEYER: Well, possibly.

12 THE COURT: Aren't there--aren't  
13 there enough stores here that the general jurisdiction--

14 MS. MEYER: That--that may be general  
15 jurisdiction here? So, because--if you do have a Utah  
16 resident, they may well be able to sue here; but we don't  
17 have that situation with the State Line. The State Line  
18 has its single business on the Nevada side in Wendover,  
19 even though they have some contacts. I have contacts  
20 with other states; I mean virtually all of us do.

21 THE COURT: Okay. But that--if  
22 they're leasing property in Utah, isn't that--

23 MS. MEYER: I don't think so, your  
24 Honor.

25 THE COURT: Isn't that--

1 MS. MEYER: They're leasing  
2 property--

3 THE COURT: That's not even in  
4 general, that's obviously a part of their business.

5 MS. MEYER: Well, certainly when it's  
6 the--the parking lot, you bet it's part of their business  
7 and if someone got injured on the parking lot, they'd be  
8 really hard-pressed to say that they couldn't sue in Utah  
9 if they were on the Utah side when they got injured; but  
10 they're not owning property in Utah.

11 And the case law that discusses these various  
12 factors talks about ownership of property. It talks  
13 about a stronger presence than merely leasing property.  
14 It talks about a stronger presence than having even a  
15 sales force in the foreign state.

16 Remember the--the case with the big long German  
17 name. They talked about more contact than that and the  
18 jurisprudence, you know, talks about substantial and  
19 continuous local activity as opposed to activity that is  
20 limited in nature and transitory in duration.

21 And what we have here is very limited types of  
22 contacts with the State of Utah. And it's also limited  
23 in duration. You look at the contracts, like the  
24 American Linen contract, which is a 1996 contract, by the  
25 way, and you know, I think those contracts are usually

1 limited by a year period and then, you know, perhaps  
2 they're renewed, if the parties are satisfied.

3 THE COURT: If we kept the case here,  
4 would we end up with applying Nevada law to the question  
5 of duty?

6 MS. MEYER: Well, I would think so.  
7 It's--it's a Nevada premises case and so I--I would think  
8 that--that that would very much come into play, where we  
9 have an injury on Nevada premises.

10 THE COURT: And is that substantially  
11 different or is that--

12 MS. MEYER: Well, I don't know to  
13 tell you the truth. I don't know. I--I doubt that it's  
14 substantially different, you know, it's--it's personal  
15 injury law.

16 Plaintiff--plaintiff's counsel accuses the  
17 State Line of--of telling falsities in--in connection  
18 with this motion and I--and I think that that's going a  
19 little bit overboard.

20 When we say, we don't do business in Utah or  
21 the neighboring states, we're talking about the hotel and  
22 casino business and that's not done in other states.  
23 Yes, there are contacts, we've always conceded there were  
24 contacts in the very same affidavits the plaintiff has  
25 pointed to, to say that we're telling the falsehoods.

1 We're saying, yeah, we have other contacts, yeah, we've  
2 had contacts with, you know, we--we obtained some  
3 services in Salt Lake, we obtained some goods in Salt  
4 Lake, we obtained services and goods in other states as  
5 well.

6 And if you look at the entire interrogatory  
7 answers which we attached to our supplemental memorandum,  
8 which was hand-delivered over on Friday, there's a list,  
9 long list of contracts; in fact, I think there are 28  
10 contracts listed and plaintiff pulls two, the American  
11 Linen and the cash register service from Salt Lake.

12 There are many more leases of property.  
13 There's--there's several parcels owned by State Line  
14 Hotel in Nevada, several other parcels owned by the State  
15 Line Properties, the Utah entity, in Utah; but you know,  
16 we're only picking a few and--and saying, looking at  
17 these, and I suppose that's appropriate, but to say that  
18 we're telling falsehoods about where we're doing business  
19 is--is just not true and it's not fair.

20 Your Honor, just in--in summary, I--I don't  
21 think that the plaintiff has met the burden of proving  
22 that the State Line has a substantial and continuous  
23 activity in Utah. There is isolated activity, it's  
24 limited in nature, it's limited in duration and that's  
25 not enough for general personal jurisdiction.

1           Certainly, in certain circumstances, it would  
2 be enough for specific personal jurisdiction, but we  
3 don't have that situation here. So, we would ask that  
4 the Court dismiss the case for lack of jurisdiction and  
5 plaintiff can then re-file if she so chooses.

6           THE COURT: You indicated, Counsel,  
7 that one of the parcels was--that they lease in Utah was  
8 a parking lot. Are the other parcels of similar kinds of  
9 things or are they used for offices or--

10           MS. MEYER: Let--let me tell you what  
11 they are. I don't know what they're all used for, but I  
12 do have a list of what they are.

13           Of the--the leases that were identified by  
14 plaintiff in the supplemental memorandum, Exhibit B, and  
15 I'm not sure what it--what it was, was not entered into  
16 until about a year after plaintiff's fall, so I didn't  
17 find out what it even was.

18           Exhibit C is a lease for a duplex in Wendover,  
19 Utah. Exhibit D is a lease for two warehouse buildings  
20 in Wendover, Utah. Exhibit E is the parking lot  
21 property. Exhibit--I'm sorry for rattling papers--  
22 Exhibit F is an eight-tenths of an acre lot in Utah and  
23 it's used for parking lot, parking structure and the--the  
24 cowboy sign. I don't know if you're familiar with that.  
25 And Exhibit G is a lease for storage space out at the old



1 Decker Field, just some storage units that they have out  
2 there at the old Air Force facility, which the City of  
3 Wendover now owns. That's it.

4 There's, you know, the parking lot property  
5 certainly would be connected. I don't know if the others  
6 are connected with the business or not, but they're  
7 really fairly minor properties all in--in the locale, in  
8 Wendover, just on the Utah side. They're not leasing  
9 property, in other words, in Orem or Provo or St. George  
10 or other places, other than right there by their  
11 business.

12 THE COURT: Okay. Thank you.

13 Mr. Katz?

14 MR. KATZ: Just a couple things, your  
15 Honor.

16 Number one, in terms of continuous versus  
17 transitory, the articles of incorporation which were  
18 entered into in Utah, signed in Utah, notarized in Utah,  
19 were adopted in 1950. That's 47 years of activity in  
20 Utah.

21 I pulled one of the leases. This is Exhibit--  
22 sorry, your Honor--Exhibit F, for instance. A 20-year  
23 lease. That's--that's pretty continuous, your Honor.

24 And the properties, themselves. A parking  
25 structure for the casino, a sign for the casino, that's

1 pretty darn closely-related to its casino business, your  
2 Honor.

3 I think we've met our burden. It--it--it--  
4 there's--there's a lot there, there is. They send their  
5 initial filing, that State Line Properties, Inc. owns a  
6 half-acre parcel of real property. That's all. They--  
7 they were--they admitted a half-acre parcel of property;  
8 sorry, I count a minimum of six.

9 This is--this is plenty. I'm--I'll submit it  
10 on that basis, your Honor. Thank you.

11 THE COURT: Okay.

12 MS. MEYER: Your Honor, may I clarify  
13 one thing?

14 THE COURT: Go ahead.

15 MS. MEYER: The affidavit that's  
16 being referred to as the initial filing was not filed in  
17 this case, it was filed in another case; but that aside,  
18 the entity that's being identified as owning a half-acre  
19 parcel of property in Wendover, Utah, is State Line  
20 Properties, Inc. It's not the entity that we're dealing  
21 with at all--

22 THE COURT: I understand that.

23 MS. MEYER: --so I think it's  
24 irrelevant.

25 THE COURT: And I think Mr. Katz

1 understood that, too.

2 MR. KATZ: I--I did, your Honor. I  
3 didn't mean to imply that it was the State Line Hotel.  
4 No, I knew it was State Line Properties.

5 THE COURT: I'm going to grant the  
6 motion to dismiss.

7 Let me state for the record that I don't  
8 believe it is a foreign non-convenience proper--problem,  
9 like Mr. Katz has made very clear that convenience of  
10 participants, that the litigating firms, that the  
11 principals, all have plenty of contact with Utah such  
12 that it may in fact be the most convenient place to try  
13 the case. So, it's clearly not a foreign non-convenient  
14 kind of an issue.

15 But I think it's a close call whether the  
16 leasing of parcels of property in Utah, and I'm going to  
17 find for the record, it's sufficiently continuous that  
18 the continuity is not the issue either. That the parking  
19 lot, the sign, I think clearly have been there, the  
20 contemplation is that they will continue to be there for  
21 an extended period of time, those are directly related to  
22 the casino business.

23 If it were simply storage space at the airport  
24 or a warehouse that may change, that would be more  
25 tenuous; but I'm not even relying on those.

1 I think the leasing of incidental parcels, and  
2 in that, I am including the signage and the parking  
3 structure and the parking lot. While those are clearly  
4 directly related to the carrying on of a casino business,  
5 they're not integral in the sense that the casino could  
6 not, in some fashion or another, continue.

7 The leasing of those parcels is insufficient to  
8 convey general jurisdiction such that the defendants are  
9 liable for all of their actions to any Utah plaintiff in  
10 a Utah court.

11 Certainly, if one of the leased parcels was the  
12 sight of the slip and fall, that would be sufficient; but  
13 I guess I'm just troubled by a slip and fall occurring in  
14 Nevada, resulting in jurisdiction in Utah when there is  
15 not a generalized presence in Utah.

16 I tried to make that sufficiently clear, Mr.  
17 Katz, that you can take it up for simplified review  
18 without a great deal of expenditure of funds to do that,  
19 and find out if I'm correct or not. I certainly have  
20 enough question in my own mind that I'm not sure that  
21 you're not going to get a reversal on that; but for the  
22 record, are there things that you want clarified, so that  
23 you can bring up a simple record to the Appeals Court?

24 MR. KATZ: I think if there were any  
25 questions about it, we can--we can get it off the

1 transcript. I can't think of any major points raised  
2 that you didn't address, although we did mention the  
3 advertising, solicitation.

4 THE COURT: And as I indicated at the  
5 last hearing, I don't think the advertisement and  
6 solicitation by itself are sufficient to get that  
7 generalized jurisdiction.

8 And without evidence showing that she was  
9 following up on one of those trips or other things that  
10 they plan and that they market, the ties are  
11 insufficient.

12 Ms. Meyer, anything that you want on the  
13 record?

14 MS. MEYER: No. Nothing, your Honor.

15 THE COURT: Okay. Ms. Meyer, if  
16 you'll draw the order and the findings then, submit that  
17 to Mr. Katz for approval as to form.

18 MS. MEYER: I will, your Honor. Can  
19 we--will you require findings, or will the findings on  
20 the record be sufficient?

21 THE COURT: I think for purposes of  
22 making sure that Mr. Katz has the right to take it  
23 clearly to the Court of Appeal, we ought to put it in a  
24 set of findings.

25 MS. MEYER: Okay.

1 THE COURT: So that they don't have  
2 to transcribe that to present the issue. I would think  
3 that it could be done fairly simply and the Court of  
4 Appeals can simply issue a ruling that I'm either out to  
5 lunch or I'm close.

6 Okay. Anything else?

7 MR. KATZ: Nothing I can think of,  
8 your Honor.

9 THE COURT: Okay. Thank you,  
10 Counsel. Court will be in recess.

11 MS. MEYER: Thank you, your Honor.

12 (Whereupon, this hearing was concluded.)  
13

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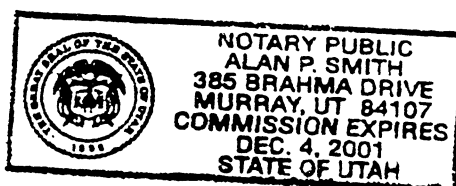
1 REPORTER'S CERTIFICATE

2 STATE OF UTAH )  
3 : ss.  
4 COUNTY OF SALT LAKE )

5 I, Alan P. Smith, Certified Shorthand Reporter,  
6 Notary Public and a Certified Court Transcriber of Tape  
7 Recorded Court Proceedings within and for the State of  
8 Utah, do certify that I received an electronically  
9 recorded videotape of the within matter and caused the  
10 same to be transcribed into typewriting, and that the  
11 foregoing pages, numbered from 1 to 23, inclusive, to the  
12 best of my knowledge, constitute a full, true and correct  
13 transcription, except where it is indicated the Videotape  
14 Recorded Court Proceedings were inaudible.

15 I do further certify that I am not counsel,  
16 attorney or relative of either party, or clerk or  
17 stenographer of either party or of the attorney of either  
18 party, or otherwise interested in the event of this suit.

19 Dated at Salt Lake City, Utah, this 10th day of  
20 December, 1997.



( S E A L )

*Alan P. Smith*  
Notary Public



## EXHIBIT “E”

STEPHEN G. MORGAN, No. 2315  
CYNTHIA K.C. MEYER, No. 5050  
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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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CHRIS BUDDENSICK,	:	DEFENDANT'S RESPONSE TO
	:	PLAINTIFF'S SUPPLEMENTAL
	:	MEMORANDUM IN OPPOSITION
Plaintiff,	:	TO DEFENDANT'S MOTION
	:	TO DISMISS
vs.	:	
	:	
STATELINE CASINO, INC., dba	:	Civil No. 9709003891PI
STATELINE HOTEL AND CASINO,	:	
and DOES I-X,	:	
	:	
Defendant.	:	Judge William A. Thorne

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Defendant State Line Hotel, Inc., by and through its attorneys of record, submits  
the following responsive memorandum to Plaintiff's September 11, 1997, Supplemental  
Memorandum in Opposition to Defendant's Motion to Dismiss.

**RESPONSE TO UNDISPUTED FACTS**

(d) Exhibit E to Plaintiff's Supplemental Memorandum is for a parking lot in Wendover, Utah.

(e) Exhibit F to Plaintiff's Supplemental Memorandum is for a 0.8 acre lot in Wendover, Utah, with monthly rental ranging from \$1,200 to \$2,500 per month over the life of the lease. The lot is leased for a parking lot, parking structure and business sign.

(f) Exhibit G to Plaintiff's Supplemental Memorandum is a lease with the City of Wendover for storage space at Decker Field in Wendover, Utah, for \$100 per month.

3. The fact that an insurance policy insures related entities is irrelevant to the determination whether this court has personal jurisdiction over the Nevada entity, State Line Hotel, Inc., in this action.

4. Defendant's answers to interrogatories notes only two Utah post office boxes. The other post office box noted in the answers is at the new Wendover, Nevada, post office, as indicated during the June 30, 1997, hearing. In addition, the only way to contact the facility at which Plaintiff was allegedly injured, is by calling a Nevada telephone number. Importantly, in Interrogatory No. 3, Plaintiff again does not limit her question to the time of the accident, but only asks about addresses and telephone numbers in the last five years which includes the present

time. It is irrelevant that the Utah entities, State Line Properties, Inc. and Ltd, used a Utah post office box.

5. Plaintiff's statements that "[n]early every agreement entered into by the Defendant, including the leases and contracts noted above, show they were executed and notarized in Salt Lake City, Utah" and that they were drafted by Utah attorneys, is terribly misleading (if not downright false):

- Exhibit A (the American Linen contract and Retail Control Systems invoice) do not indicate where they were executed or who drafted them.
- Exhibit B is the only document which indicates that it was executed in Salt Lake City and drafted by Salt Lake City attorneys.
- Exhibit C does not indicate where it was executed or who drafted it.
- Exhibit D does not indicate where it was executed or who drafted it.
- Exhibit E was notarized by a Nevada notary (unclear as to where it was executed) and otherwise does not indicated who drafted it.
- Exhibit F was signed and notarized in Nevada.
- Exhibit G does not indicate where it was executed or who drafted it but does indicate that it is made and construed under the laws of Utah.